

91-218
No. 2

Supreme Court U.S.

FILED

JUN 19 1991

OFFICE OF THE CLERK

APPENDIX FOR PETITIONER

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1991

RICHARD DeCLARA,
Petitioner,

-versus-

METROPOLITAN TRANSPORTATION AUTHORITY, METRO-NORTH COMMUTER RAILROAD COMPANY, PETER S. STANGL, Individually and as President and General Manager of Metro-North Commuter Railroad Company, THOMAS A. CONSTANTINE, Individually and as Superintendent of Police, New York State, RAYMOND BURNEY, Assistant Director of Labor Relations, Metro-North Commuter Railroad, THE STATE OF NEW YORK,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND JUDICIAL CIRCUIT

SAM POLUR, Esq.
Attorney for PETITIONER
RICHARD DeCLARA
110 East 23 Street
New York, N.Y. 10010
(212) 777-8616



APPENDIX FOR PETITIONER

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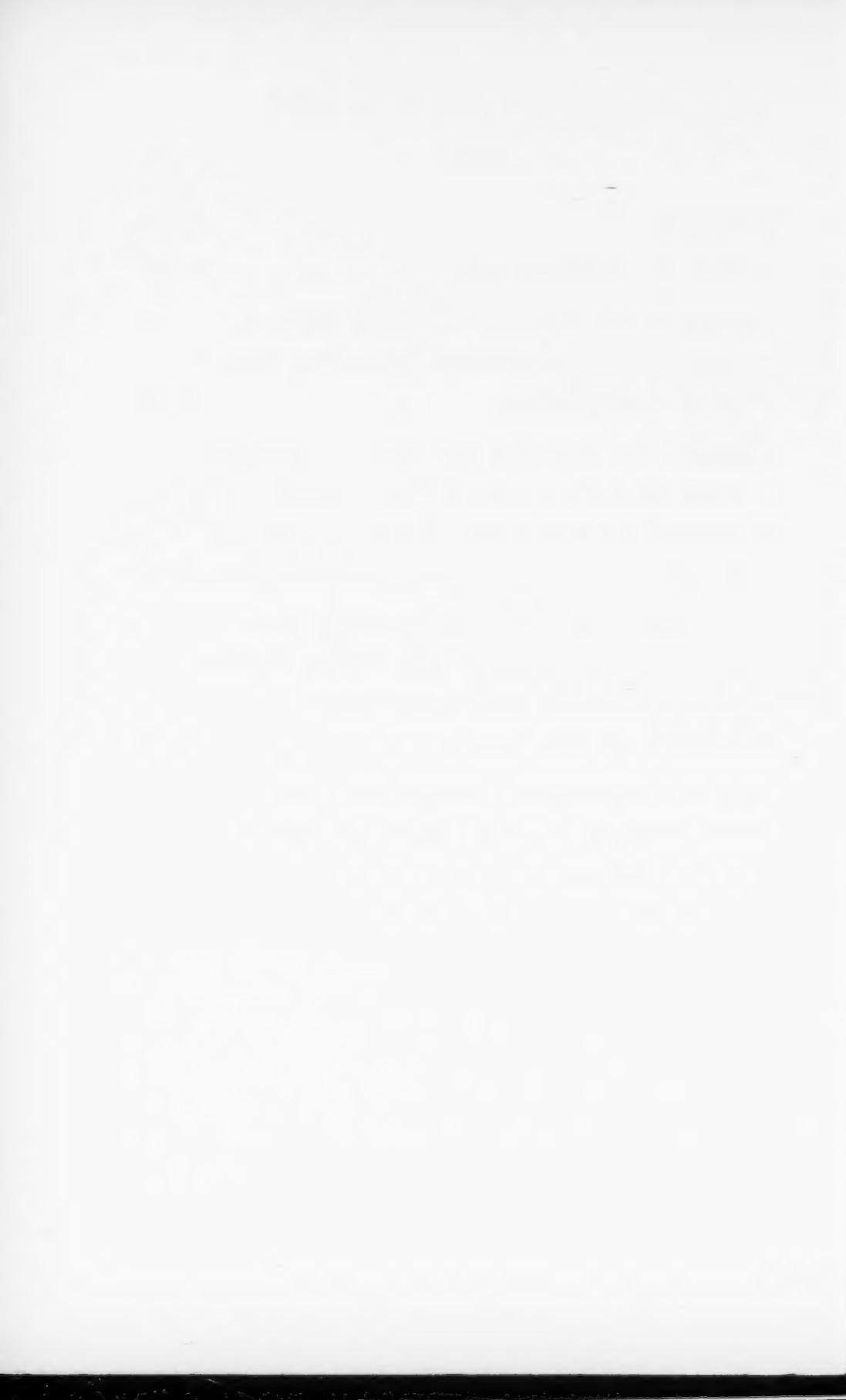
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 21st day of March, One Thousand Nine Hundred and Ninety-One.

Present:

Hon. James L. Oakes,
Chief Judge,
Hon. J. Edward Lumbard,
Hon. Richard J. Cardamone,
Circuit Judges.

Richard DeClara,

Plaintiff-Appellant,

90-7925

-versus-

Metropolitan Transportation Authority,et al.,
Defendants-Appellees.

O R D E R

Richard DeClara, a former employee of Metro-North Commuter Railroad Company (Metro-North), appeals from an order entered in the United States Court for the Southern District of New York, Robert W. Sweet, Judge, dismissing his complaint pursuant to Fed.R.Civ.P. 12(b) and on several other grounds. For the reasons set forth below, we affirm.



Metro-North employed DeClara as a Police Captain from 1967 to 1989. In March or April 1983, while Metro-North workers were on strike, DeClara and other Metro-North officers were assigned to patrol Grand Central Station Terminal ("Grand Central"). Sometime during that period, DeClara and some other officers filmed a VHS video tape in Grand Central entitled "Buba on Patrol". De-Clara engaged in a wide variety of offensive behavior in the film. One scene shows DeClara patrolling completely nude except for a police officer's hat, necktie, gun, holster, and shoes and socks. Elsewhere, DeClara interviews a homeless woman whom he calls a "good-looking broad." In yet another shot, DeClara speaks with a black man, asking him questions about tap dancing and eating watermelon.

Apparently, Metro-North did not know of the tape until August 2, 1988, when appellee Peter Stangl, the General Manager of Metro-North, learned of it. Stangle wrote a letter to appellee Thomas Constantine, the Superin-



tendent of State Police, informing him of and enclosing a copy of the tape. / On August 10, 1988, Constantine revoked DeClara's commission as a railroad police officer. In a letter of August 17, 1988, Metro-North Chief of Police John Wilson informed DeClara that his police commission had been revoked. The letter further stated that pursuant to the collective bargaining agreement, DeClara had forfeited his seniority and his employment relationship with Metro-North had been terminated.

On August 20, 1988 the Railroad Police Benevolent Association (the "union") appealed the matter to the Labor Relations Department of Metro-North. The appeal was denied. On September 28, 1988, the union requested that the Special Board of Adjustment No. 980 (the "Adjustment Board") arbitrate the matter. The Adjustment Board upheld DeClara's discharge on January 11, 1989. DeClara then filed this suit on November 2, 1989. The District Court subsequently granted all of defendants' motions to dismiss.¹

* On August 4, 1988, Constantine suspended DeClara and the other officers pending disciplinary proceedings.



DeClara challenges only a few of the District Court's grounds for dismissal. Specifically, DeClara contends that the district court erroneously held that: 1) it did not have jurisdiction to review the Adjustment Board's award affirming DeClara's termination of employment; and 2) his due process rights were protected by the Arbitration proceeding conducted pursuant to the Railway Labor Act and the collective bargaining agreement. Both of DeClara's contentions were deemed without merit.

1 Appellees Metropolitan Transportation Authority, Metro-North, Stangl, and Burney filed the initial motion to dismiss pursuant to Fed.R.Civ.P. 12(b). Thereafter, the remaining appellees, State of New York and Constantine filed a motion joining their then co-defendants Rule 12(b) motion, and moved for dismissal under both Fed.R.Civ.P. 4(j) and Eleventh Amendment. The District Court dismissed the complaint against the State and Constantine on both Rule 4(j) and Eleventh Amendment grounds. DeClara did not challenge - and does not now - this portion of the District Court's ruling. As DeClara does not challenge this portion of the district court's ruling, we do not address it here.

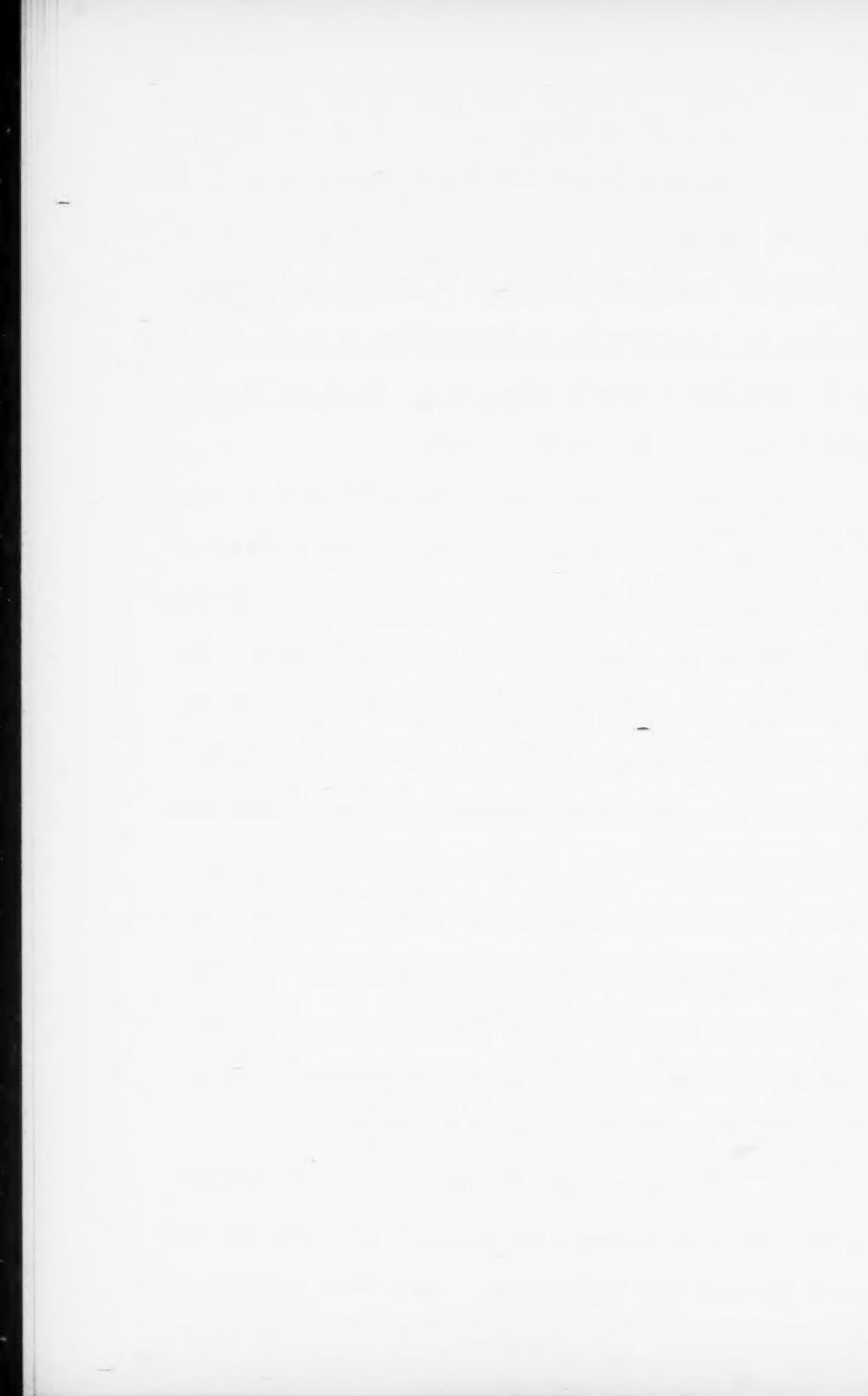


1. Jurisdiction

As the District Court correctly stated, federal courts generally lack jurisdiction to review an Adjustment Board's findings. See, Andres v. Louisville & Nashville R.R. Co., 406 U.S. 320,324 (1972); Baylis v. Marriot Corp., 843 F.2d 658, 662 (2d Cir.1988).

The Railway Labor Act, 45 U.S.C. sec. 151 etseq., provides, in part, that a federal court may only review the holding of an Adjustment Board in very limited circumstances, including: 1) when the Adjustment Board fails to comply with the requirements of the RLA; 2) when the Adjustment Board either considers matters outside the purview of its jurisdiction, or fails to consider matters within its jurisdiction; or 3) when the members of the Adjustment Board commit fraud or corruption. See 45 U.S.C. sec.153(q); Union Pacific R.R. v. Sheenan, 439 U.S. 89, 93 (1978).

DeClara invokes the last two exceptions in his attempt to establish federal subject matter jurisdiction. He first claims



that the Adjustment Board failed to consider the issue of Constantine's authority to terminate his employment, in violation of 45 U.S.C. sec.153(q)(2). Here, the district court rightly found that the RLA endows the Adjustment Board with jurisdiction to interpret employment contracts and resolve disputes. See 45 U.S.C. sec.151 et.seq.. The Board, however, does not have jurisdiction to determine the powers of Constantine, who, as a non-signatory party, is beyond the reach of the collective bargaining agreement. In refusing to rule on the issue of Constantine's authority, the Adjustment Board therefore complied with the RLA. As such, the ruling is beyond review by a federal court.

DeClara's fraud argument falls more quickly. In order to invoke this exception, there had ^{to} / have been fraud by a Board member. See 45 U.S.C. sec.153 First (q)(3). DeClara's pleadings are insufficient because they allege corruption on the part of various defendants, but not on the part of any member of the Board.



Absent an applicable exception, the jurisdictional bar against our review of the Adjustment Board's ruling remains intact.

2. Due Process

Alternatively, DeClara contends that appellees' failure to provide a full trial before firing him deprived him of the right to due process guaranteed by the Fourteenth Amendment. We disagree.

Post-deprivation arbitration procedures developed pursuant to a collective bargaining agreement may satisfy the requirements of due process. See Parrett v. Comersvelle, 737 F.2d 690, 696-97 (7th Cir. 1984), cert. dismissed, 496 U.S. 1145 (1985); Jackson v. Temple Univ., 721 F.2d 931, 933 & N.2(3rd Cir.1983); Lewis v. Hillsborough Transit Auth., 726 F.2d 664,667 (11th Cir. 1983) (per curiam). DeClara received a hearing before the Labor Relations Department of Metro-North, and had an appeal to the Adjustment Board. Although DeClara's argument here is somewhat conclusory, he apparently contends that this grievance pro-



cedure, followed pursuant to the RLA and the collective bargaining agreement, violated due process because the Adjustment Board did not rule on the merits of his termination or review whether Constantine exceeded his authority. As indicated above, the Adjustment Board did not have jurisdiction to consider Constantine's authority. Furthermore, any challenge to the propriety of Constantine's revocation of DeClara's commission was also outside the Adjustment Board's purview because such a challenge may be raised only in state court pursuant to N.Y.Civ.Prac.L.& R. Art. 7801 et.seq. (McKinney 1981), commonly known as "Article 78." At oral argument, DeClara conceded that he had filed an Article 78 action, but had later withdrawn it. DeClara's due process contentions thus amount to nothing more than a rehashing of his jurisdictional argument and a concession that he failed to avail himself of the appropriate remedy under state law.

We recognize the wisdom of the authority holding that post-deprivation arbitra-



tion procedures may not only comport with due process, but may also expediently resolve labor disputes. See Parrett, 737 F.2d at 697. Absent a compelling reason to hold otherwise, we apply that wisdom to this case.

Accordingly, we affirm the judgment of the district court.

s/

JAMES L. OAKES, Chief Judge

s/

J. EDWARD LUMBARD, Circuit Judge

s/

RICHARD J. CARDAMONE, Circuit Judge



UNITED STATES COURT OF APPEALS
SECOND JUDICIAL CIRCUIT

RICHARD DeCLARA,

X

Plaintiff-Appellant, : 90-7925

:

-versus-

METROPOLITAN TRANSPORTATION :
AUTHORITY, et al.,

:

Defendants-Appellees. :

X

AFFIRMATION OF ATTORNEY IN
SUPPORT OF NOTICE OF MOTION
TO REINSTATE APPEAL HEREIN

SAM POLUR, Esq., duly licensed Attorney and member of the Bar of this Court since on or about 1965, respectfully affirms:

1. At all material times herein he is counsel of record for appellant and hence is fully familiar with the basic facts and issues herein.

2. Since about mid-July your affir-
mant has suffered a series of "dizzy spells", necessitating hospitalization in late September at the Veterans Administration facility in Manhattan.



3. To this date, while I am out on a "convalescent" basis effectively, I have been unable to work more than some twenty percent of my usual hours.

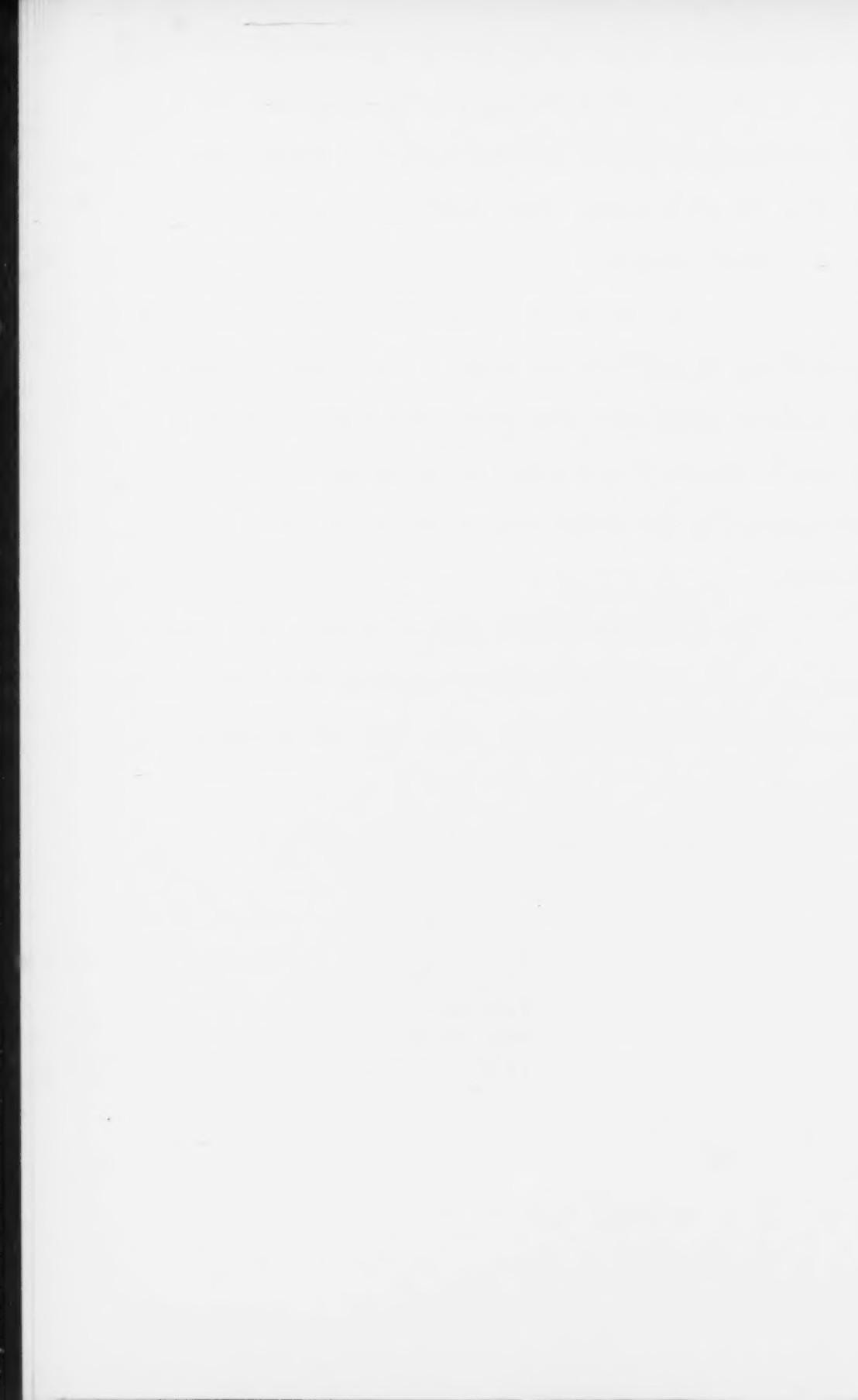
4. It is only because of these serious attendant disabilities that I have been unable to timely complete the required substantive matters herein, and pray this delay will not consequently be destructive of my client's rights.

5. My thanks and appreciation for courtesies extended, and embarrassment for the necessity to submit this plea for an extension of time.

DATED: November 8, 1990.

s/

SAM POLUR
Attorney for Plaintiff
RICHARD DeCLARA
206 West 23 Street
New York, N.Y. 10011
(212) 366-6737



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD DeCLARA,

Plaintiff-Appellant, :

-versus-

METROPOLITAN TRANSPORTATION AUTHORITY, :
METRO-NORTH COMMUTER RAILROAD COMPANY,
PETER E. STANGL, Individually and as
President and General Manager of Metro- :
North Commuter Railraod Company, THOMAS
S. CONSTANTINE, Individually and as
Superintendent of Police, New York State, :
RAYMOND BURNEY, Assistant Director of
Labor Relations, Metro-North Commuter
Railroad Company, THE STATE OF NEW YORK, :

Defendants-Appellees.

=====

NOTICE OF APPEAL

89 Civ. 7316 (Sweet, J.)

S I R S :

PLEASE TAKE NOTICE, that RICHARD De-
CLARA, Plaintiff-Appellant herein, hereby
respectfully appeals to the United States
Court of Appeals for the Second Circuit,
at Foley Square, City, County and State of
New York, fromthe Opinion and Order of Dis-
missal of his action by HON. ROBERT W. SWEET,
Judge, United States District Court for the



Southern District of New York, dated September 10, 1990, duly entered thereafter; and plaintiff-appellant herein timely appeals from each and every part of said Opinion, Order and Judgment.

DATED: October 4, 1990.

s/

SAM POLUR
Attorney for RICHARD
DeCLARA, Appellant
206 West 23rd Street
New York, New York 10011
(212) 366-6737



NEW YORK STATE SUPREME COURT
COUNTY OF NEW YORK

Index No.
27552/88

X

In the Matter of the Application of
RICHARD DeCLARA, Petitioner,

:

For a Judgment in the Nature of Pro-
hibition of the Ruling Dismissing
Petitioner from Service as Railroad
Police Officer,

:

Petitioner,

:

-versus-

:

THOMAS A. CONSTANTINE, Individually
and as Superintendent of Police,
New York State,

:

Respondent.

:

X

PETITION IN NATURE OF PROHI-
BITION AGAINST RULING OF SU-
PERINTENDENT OF POLICE NEW
YORK STATE, THOMAS A CONSTAN-
TINE, NUNC PRO TUNC.

The petition of RICHARD DeCLARA
respectfully shows and alleges:

1. At all times hereinafter men-
tioned, petitioner was and still is a citizen
of the United States and a resident of Queens,
State of New York, and resides at 147-34
22nd Avenue, Whitestone, New York 11357.

2. That on or about the year 1967,
petitioner duly entered the employ of New



York Central Railroad Corporation in the capacity of Police Officer; and, until petitioner was arbitrarily and capriciously removed from his said employment as Police Officer for the successor railroad, to wit, Metro-North Commuter Railroad, petitioner was continuously employed in the capacity as Railroad Police Officer, with a distinguished record of service thereaf and therein.

3. That petitioner was duly appointed a Railroad Police Officer pursuant to Chapter 49 of the Consolidated Laws of the State of New York, Laws 1910, Chapter 481, Article 3 Section 88, paragraph 1, known as the Railroad Law of the State of New York.

4. Respondent Thomas A. Constantine ("CONSTANTINE") is, at all material times herein, the duly appointed Superintendent of Police of the State of New York.

5. On or about August 10, 1988 the aforesaid Superintendent of Police irregularly,^{*} without cause removed petitioner from his said position as Railroad Police Officer of Metro-

*and illegally



North.

6. That said "REVOCATION OF APPOINTMENT AS RAILROAD POLICEMAN" of petitioner Richard DeClara took effect on August 10, 1988 by virtue of the said revocation via the signed Order by respondent Constantine, and thereafter was received by petitioner DeClara. (EXH."A")

7. Said revocation occurred without an accusatory instrument being tendered against petitioner, without a hearing, without testimony under oath and subject to perjury, and cross-examination; without even an informal hearing providing sworn testimony by petitioner reflective of any alleged charges warranting peremptory, summary revocation of his Commission as a Railroad Police Officer; more particularly in view of the meticulously formulated, mandated steps to be taken as duly set forth in the Collective Bargaining Agreement between the parties hereto and herein.

8. Such act by Superintendent Constantine, at the express behest and connivance



of the Carrier's Stangl, directly conflicted with Title 45 U.S.C. sec. 152 Chapter 8, par. 8 which includes the following:

"The provisions of said paragraphs are made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them." (emphasis added)

9. The Collective Bargaining Agreement between the Metro-North Commuter Railroad (hereinafter "Metro-North") and the Class and Craft of Railroad Police Officers employed by Metro-North is suffused with detailed, articulated particulars for resolution of disputes between the parties. These are in conformance with basic rights and Constitutional protections afforded by Due Process and Equal Protection of the Laws.

10. The said "Revocation of Appointment" (EXHIBIT "A"), initiated by a collusive letter from Peter Stangl, President and General Manager of Metro-North (EXHIBIT "B"), was a deliberate, unconstitutional bald circumvention of the Collective Bargaining Agree-

ment between Metro-North and the Railroad Police Officer Richard DeClara, Petitioner herein.

11. Article 3 of the New York State Railroad Law, sec.88 thereof, par. 17, contains this unconstitutional authority provided to the Superintendent of State Police, set forth hereinbelow for continuity:

"The superintendent of state police may also at pleasure --- revoke the appointment of any such policeman by filing a revocation thereof in the office of the department of state..." (emphasis added)

12. Pursuant to the loose and undisciplined language cited in the statute, as shown, Id., there are glaring Constitutional infirmities. The Superintendent thereby is vested with dictatorial powers. He need not answer to Constitutional limitations. Statutory restraints need not inhibit him. Collective Bargaining Agreements known to him between the Carrier and its Police Officer employees may be obviated. Circumvention, as the Superintendent even promiscuously deems



seemly, becomes the "law of the case." Unbridled and unprincipled fiat governs in lieu of orderly, Constitutional Due Process and Equal Protection of the Law, even for the Railroad Police Officer. Such unprincipled and unbridled conduct bespeaks of a Statute with a built-in bias thereby of unconstitutionality.

WHEREFORE, Petitioner RICHARD DeCLARA respectfully moves this Court for an Order and Judgment:

1. Annulling and modifying the Revocation of Appointment by Superintendent of State Police THOMAS A. CONSTANTINE, dated August 10, 1988 and the August 17, 1988 approval and action by JOHN J. WILSON, Jr., Chief of Police of Metro-North Commuter Railroad, in conformance therewith, Nunc Pro Tunc.

11. Finding that Article 3 of the New York State Railroad Law, sec. 88, para. 17 is unconstitutional and must be revoked and annulled as a matter of Constitutional Law and Constitutional Limitations; and

111. Declaring all other further and different relief to be provided to petitioner RICHARD DeCLARA as the Court deems just and appropriate in the premises.

DATED: October 7, 1988.

s/

SAM POLUR
Attorney for Petitioner
RICHARD DeCLARA
391 East 149th Street, No 318
Bronx, New York 10455
(212) 777-8616

I N D I V I D U A L V E R I F I C A T I O N

STATE OF NEW YORK : --
COUNTY OF BRONX : ss.

RICHARD DeCLARA, being duly sworn,
deposes and says:

I am the petitioner in the within proceeding; I have read the foregoing petition and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

DATED: October 7, 1988.

s/

RICHARD DeCLARA

(Notarized)

THOMAS A. CONSTANTINE
Superintendent

STATE OF NEW YORK
NEW YORK STATE POLICE

REVOCATION OF APPOINTMENT AS RAILROAD POLICEMAN

Effective IMMEDIATELY, THE APPOINTMENT OF

RICHARD DeCLARA
147-34 22nd Avenue
Whitestone, New York 11357

AS A RAILROAD POLICEMAN FOR THE
METRO NORTH COMMUTER RAILROAD COMPANY

IS HEREBY REVOKED

Dated at the City of Albany, New York
THIS 10th DAY OF AUGUST, 1988

s/

Superintendent of State Police



METRO-NORTH COMMUTER RAILROAD

August 2, 1988

Hon. Thomas A. Constantine
Superintendent
New York State Police
State Campus
Albany, New York 12226

Dear Superintendent Constantine:

I am writing to bring to your attention a very serious matter regarding a videotape made by some members of the Metro-North Police Department. I learned of the existence of this tape yesterday and wanted to bring this to your attention as quickly as possible. A copy of the videotape is enclosed. Briefly stated, the tape depicts one Metro-North lieutenant, four sergeants and three police officers engaged in various acts of unprofessional and unacceptable conduct within the Grand Central Terminal Building. We believe the tape was made during March or April of 1983 while Metro-North was on strike security duty /during the late night and early morning hours.

Attached is a list of the names of the officers depicted on the tape. We would be glad to send a representative to view the tape with you in order to specifically identify the individuals shown in the various scenes.

*...and a larger than normal complement of officers were on strike security duty ...



As you know, police commissions have been issued to these individuals by your office in accordance with Section 88 of the New York Railroad Law. Subdivision 5 of the section requires that a person be shown to be of good moral character to receive such an appointment. Subdivision 17 of that law empowers you to revoke such an appointment of any railroad policeman at your pleasure. In my opinion, these individuals have demonstrated by their conduct, a lack of good moral character and fitness to hold a police commission. I urge you to review this matter and to revoke their police commissions based on the acts depicted in this film. Pending your determination I have suspended these officers without pay.

Sincerely,

s/
Peter Stangl

President and General Manager



CERTIFIED MAIL NO. P 974 926 632

Return Receipt Requested

METRO-NORTH JOHN R. WILSON, JR.
COMMUTER RAILROAD Chief of Police

August 17, 1988

Mr. Richard A. DeClara
147-34 22nd Avenue
Whitestone, New York 11357

Dear Mr. DeClara:

Metro-North has been informed by the Office of the New York State Police Superintendent that your appointment as Railroad Policeman has been revoked effective August 10, 1988. A copy of the revocation notice is attached.

As a result thereof, pursuant to Article 21 Section 2 of the Collective Bargaining Agreement between Metro-North and the Railroad Police Benevolent Association, you have forfeited your seniority and accordingly, your employment relationship with Metro-North Commuter Railroad is terminated.

Very truly yours,
s/
John J. Wilson, Jr.
Chief of Police



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

89 Civ. 7316
Summons in a Civil Action

RICHARD DeCLARA,

Plaintiff,

-versus-

METROPOLITAN TRANSPORTATION AUTHORITY,
METRO-NORTH COMMUTER RAILROAD COMPANY,
PETER E. STANGL, Individually and as President and General Manager of Metro-North Commuter Railroad Company, THOMAS A. CONSTANTINE, Individually and as Superintendent of Police, New York State, RAYMOND BURNETT, Assistant Director of Labor Relations, Metro-North Commuter Railroad Company, THE STATE OF NEW YORK,

Defendants.

Defendants' Addresses:

THOMAS A. CONSTANTINE: All Other Defendants:

Albany, New York 347 Madison Avenue
State Office Building New York, N.Y. 10017

ED

YOU ARE HEREBY SUMMONED AND required to file with the Clerk of this Court and serve upon Plaintiff's Attorney: Sam Polur, Esq.

391 E. 149 Street

Bronx, New York 10455

(212) 402-6497

an answer to the complaint which is herewith served upon you, within Twenty days after service of this summons upon you, exclusive



of the day of service. If you fail to do so,
judgment will be taken by default against you
or the relief demanded in the complaint.

RAYMOND F. BURGHARDT, CLERK

ROBERT MIRANDA
Deputy Clerk

November 2, 1989

DATE



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD DeCLARA, (89 Civ. 7316) X

Plaintiff,

-versus-

METROPOLITAN TRANSPORTATION AUTHORITY,
METRO-NORTH COMMUTER RAILROAD COMPANY,
PETER STANGL, Individually and as Presi-
dent and General Manager of Metro-North
Commuter Railroad Company, THOMAS A. CONS-
TANTINE, Individually and as Superintendent
of Police, New York State, RAYMOND BURNETT,
Assistant Director of Labor Relations, Metro-
North Commuter Railroad Company, THE STATE
OF NEW YORK,

Defendants.

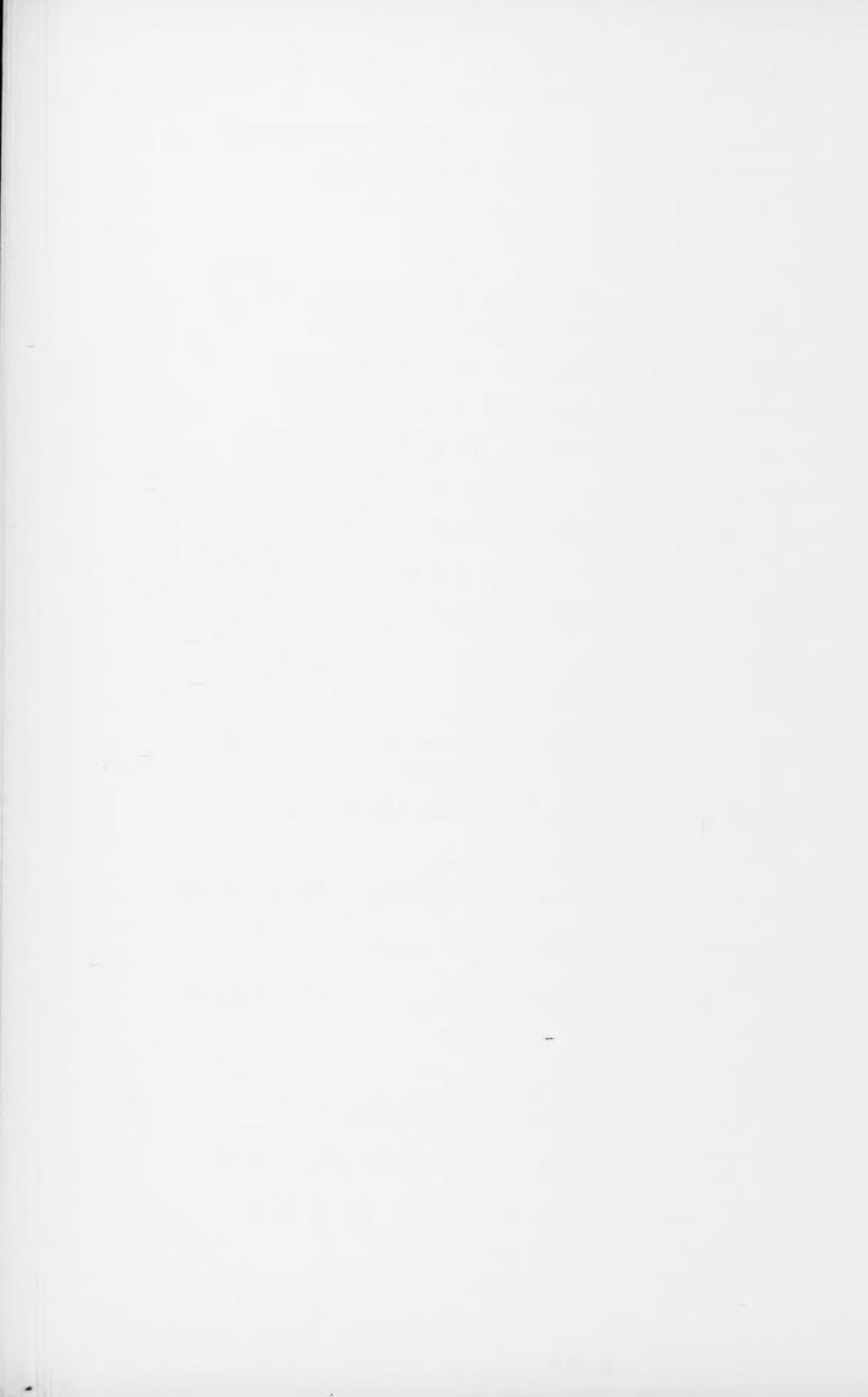
VERIFIED COMPLAINT

Plaintiff Respectfully Demands Trial by Jury

Plaintiff RICHARD DeCLARA, COMPLAINING
of the defendants and each of them, by and
through his Attorney SAM POLUR, Esq., alleges
and shows:

A. PRELIMINARY STATEMENT

1. This action is brought pursuant
to 42 U.S.C. secs.1983 and 1988, 45 U.S.C.
sec.151, et seq..



2. In the first cause of action for relief herein, inter alia, plaintiff DeClara seeks redress pursuant to secs. 1983 and 1988, 42 U.S.C., 45 U.S.C. secs. 151, et seq., for denial of due process and deprivation of rights arising out of the wrongful discharge and wrongful taking of plaintiff's property and property rights without a semblance of Due Process and Equal Protection of the Law safeguards of the United States Constitution and the New York State Constitution, all under color of state law.

3. In the seond claim for relief herein, inter alia, plaintiff DeClara seeks redress pursuant to secs. 1983 and 1988, 42 U.S.C., for a denial of Due Process and deprivation of civil rights and property, together with property rights deprivation arising out of the wrongful taking and divesting of plaintiff's Commission as a Police Officer in the State of New York by defendants' Metro-North, Peter Stangl ("STANGL"), President and General Manager of Metro-North, RAYMOND BURNLEY ("BURNLEY"), Assistant



Director of Labor Relations, Metro-North Commuter Railroad Company ("METRO-NORTH"), and Thomas A. Constantine ("CONSTANTINE"), Superintendent of Police, State of New York.

B. DEMAND FOR JURY

4. Plaintiff DeClara respectfully demands trial by jury in this action and proceeding.

C. JURISDICTION AND VENUE

5. This action arises pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, all under 42 U.S. secs. 1983 and 1988.

6. The Jurisdiction of this Court is predicated upon 28 U.S.C. secs.1331 and 1343(a)(3) and (4), and upon 45 U.S.C. secs. 151 and 153, et seq.

7. Venue lies in this District pursuant to 28 U.S.C., sec.1341(b). The claims alleged herein arose in the Southern District of New York and, at all times relevant herein, defendants Metro-North Commuter



Railroad and Peter Stangl's principle place of business is located in the Southern District of New York. Furthermore, defendant Constantine, resided and was found, had agents and/or transacted the affairs of the New York State Police in the Southern District of New York, in his official capacity as Superintendent of Police, New York State Police.

D. THE PARTIES

8. Plaintiff DeClara is a citizen of the United States and a resident of the State of New York. At all times material herein plaintiff was a Police Officer with defendant Metro-North. Plaintiff, further, is a "Police Officer" within the meaning of the term utilized in certification N.M.B. Case No. 4-5468 of the National Mediation Board.

9. Defendant Metro-North is the operational body of the defendant METROPOLITAN TRANSPORTATION AUTHORITY ("MTA"), with regard to operation, maintenance and control of commuter railroads in the New York, Connecticut areas. The principal place of



business of the defendant Metro-North is located in the Southern District of New York.

10. Defendant PETER STANGL ("STANGL") is the President and General Manager of Metro-North and served in that capacity at all times material herein. Stangl is sued in his individual and official capacities.

11. Defendant RAYMOND BURNEY ("BURNEY") is Assistant Director of Labor Relations, Metro-North, and in that capacity is mandated to bargain in good faith with Metro-North Police Officer employees such as plaintiff RICHARD DeCLARA.

12. Despite that mandate, in direct confrontation with RON REALE ("REALE"), Labor Consultant to Metro-North and plaintiff DeClara, defendant Burney, individually and in his capacity as Assistant Director of Labor Relations for Metro-North, refused to bargain in good faith concerning basic rights of DeClara.

13. Defendant THOMAS A. CONSTANTINE — ("CONSTANTINE") is and was at all times material herein the Superintendent of Police,



New York State. Constantine is sued in his individual and official capacity.

14. At all times relevant hereto and herein, the individual defendants, supra, were acting under Color of State Law, pursuant to their authority as Officers licensed by the State of New York.

E. ALLEGATIONS RELEVANT TO DeCLARA

15. Plaintiff DeClara is a now ex-Po-lice Officer who started his career in Law Enforcement in 1967 as a New York Central Police Officer. Plaintiff was commissioned by New York State Police prior to Police Academy. He made arrests and special merit award because of an arrest he made of an arsonist terrorizing Grand Central Terminal and environs. Plaintiff was promoted to sergeant shortly after said arrest.

16. Plaintiff during 1968 to 1970, made arrests for larcenies, robberies and one attempted rape. Plaintiff received commendation from Judge H. Solniker, Daniel



Weiss and Congressman Farbstein. Other commendations included letters of commendation from Assemblyman Anthony D. Falco, who witnessed his actions in an evacuation of Grand Central Terminal when the area was smoke filled, and from Hon. Robert Morgenthau, New York County District Attorney, for his efforts in the successful prosecution of a robbery case.

17. Plaintiff received the Policemens Benevolent Association medal on August 31, 1981 for the arrest of one Peter Donahue, who shot and killed New York City Police Officer Thomas Shementi outside of Grand Central Station on August 17, 1980.

18. Plaintiff was promoted to Lieutenant on October 12, 1977 and placed in the elite Police Helicopter Program.

19. In 1983, men under plaintiff De-Clara's command made numerous arrests in protecting the general public. They were responsible for breaking up a hard-core ring of pick-pockets terrorizing Grand Central patrons.



20. Plaintiff's team of officers have received many letters of commendation for the arrests of gangs committing crimes against the homeless. Through the inspired leadership of DeClara, such crimes have been virtually eliminated.

21. Men under plaintiff's supervision have a pre-eminent Warrant-recovery record, recognized throughout the nation. Plaintiff's cadre of Police Officers have achieved the distinction of being placed on special Warrant Task Force as a result of their outstanding Police work.

22. Plaintiff became a Union delegate in 1978. He was also Vice President of the Patrolemens Benevolent Association ("PBA"). DeClara successfully fought against indiscriminate use of the Polygraph Testing among his peers.

—23. Despite his generally-outstanding record as a Police Officer for the Railroad, on or about August 4, 1988, defendants Stangl and Metro-North summarily and peremp-



torily dismissed the plaintiff from his position as a Police Officer. This was done without prior notice, hearing, trial; also, absent accusatory instrument and fundamental safeguards to Due Process and Equal Protection of the Laws due to all persons within the American Constitutional system of laws, of Checks and Balances.

24. Defendants, individually and collectively, have conspired to and have deprived plaintiff of his Commission as a Police Officer duly commissioned by the New York State Police since 1967. Defendants, and each of them, have effectively deprived plaintiff of his property and property rights and interests without Due Process of Law: in derogation of the Federal and State Constitutions.

25. Plaintiff thereby has and continues to suffer monetary damages and economic and financial injury.

26. The acts of defendants, and each of them complained of herein, were at all times done under Color of State Law and in-



tended to deprive plaintiff of his civil and Constitutional rights.

FIRST CLAIM FOR RELIEF

(DeClara against Metro-North,
Stangl and all Defendants)
--Section 1983, 42 U.S.C.--

27. Plaintiff repeats and realleges paragraphs numbered "1" through "26", as if the same were fully set forth at length herein.

28. At all times prior to and during the period in which plaintiff was discharged from his position as a Police Officer with defendant Metro-North, defendants Metro-North and Stangl knew or should have known that De-Clara sought the exercise of his lawful rights pursuant to Due Process and Equal Protection Clauses of the Federal and State Constitutions; and was entitled to rights and relief therein provided.

29. The acts of defendants Metro-North and Stangle were committed under Color of State Law and by virtue of the authority vested in them by defendant MTA and the City and State of New York, and threby deprived plain-

tiff of his rights, remedies, privileges and immunities duly guaranteed to every citizen of the United States; in violation and in derogation of 42 U.S.C. secs. 1983 and 1988; and thereby deprived plaintiff of his rights guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. secs. 1983 and 1988.

30. As a consequence of the above, plaintiff sustained the damages as duly cited, supra and infra.

SECOND CLAIM FOR RELIEF

(DeClara against Metro-North, Stangl
and all defendants)
--42 U.S.C. sections 1983,1988--

31. Plaintiff repeats and realleges paragraphs numbered "1" through "26" and "28" through "30" as if the same were fully set forth herein.

32. At all times relevant herein, defendants and each of them knew or should have known that plaintiff sought the exercise of his lawful rights pursuant to the Due Process and Equal Protection of the New



York State and Federal Constitution Clauses, and was entitled to the rights, remedies and relief theron duly provided.

33. The act of defendant Constantine, in revoking the Commission of plaintiff De-Clara as a Railroad Police Officer in the State of New York was committed Under Color of State Law by virtue of the authority vested in defendant Constantine as Superintendent of State Police of New York; and thereby deprived plaintiff of his rights, remedies, privileges and immunities guaranteed to every citizen of the United States, in violation of and in derogation of 42 U.S.C. secs. 1983 and 1988; and deprived plaintiff of his property rights and interests guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

34. The primary acts of defendants Metro-North, Stangl and Constantine, in conjunction with the ancillary acts of the remaining defendants, plaintiff alleges were done in conspiracy; and that defendants and



each of them, were co-conspirators engaged in a scheme and conspiracy designed and intended to deprive plaintiff of his property rights and property interests duly guaranteed pursuant to the Constitution and Laws of the United States and the State of New York.

35. The plaintiff sustained the damage as duly cited, supra and infra, as a consequence of the above.

THIRD CLAIM FOR RELIEF

(DeClara against Metro-North, Stangl and all defendants)

--Waiver, Equitable Estoppel and Laches--

36. Plaintiff repeats and re alle paragraphs numbered "1" through "26," "28" through "30" and "32" through "35" as if the same were fully set forth herein.

As to Waiver:

37. That defendants MTA, Metro-North, Stangl did, jointly and severally, on information and belief, know at all times about the alleged action(s) of plaintiff DeClara -- from the inception thereof in 1983, and were



formally aware of same since, at the latest, 1985, when a Captain of Police of Metro-North duly informed the Chief of Police for Metro-North, ESPOSITO, of same.

38. Nonetheless, defendants and each of them chose to waive any and all alleged lawful remedies available/ ^{to} them by an intentional relinquishment and abandonment of their known right and remedies to discipline DeClara.

39. Thereby, plaintiff DeClara was lulled into a false sense of security and failed to take affirmative actions to protect his professional and personal position and status, all to his grievous detriment.

As to Equitable Estoppel:

40. That defendants Metro-North, MTA, Stangl and all defendants herein did, individually and collectively, create an Equitable Estopped against themselves vis-a-vis plaintiff DeClara.

41. Said defendants and each of them are now estopped to deny the reality of the events which they have made to exist, to wit,



a deliberate refusal to act upon the alleged affirmative conduct of plaintiff which they allegedly decry --; and upon which plaintiff acted in fullest reliance, to his grievous detriment.

As to Laches:

42. Laches, due to the unconscionable length of time defendants and each of them authorized, guided and permitted the squalid "status quo" to continue - in order to further entice and lull plaintiff into a false sense of security - is also inherent in the right herein which sounds in estoppel.

WHEREFORE, plaintiff RICHARD DeCLARA respectfully demands judgment against the defendants and each of them as follows:

a) As to the First Claim for Relief, an award of compensatory damages in the amount of One Million (\$1,000,000.00) Dollars as against all defendants but THOMAS A. CONSTANTINE, jointly and severally.

b) As to the First Claim for Relief, award of punitive damages in the amount of



One Million (\$1,000,000.00) Dollars against all defendants but THOMAS A. CONSTANTINE, jointly and severally.

c) As to the Second Claim for Relief, an award of compensatory damages in the amount of One Million (\$1,000,00.00) Dollars against defendant THOMAS A. CONSTANTINE, defendant PETER STANGL, defendant Railroads MTA and Metro-North and defendant STATE OF NEW YORK, jointly and severally.

d) As to the Second Claim for Relief, an award of punitive damages in the amount of Ten Million (\$10,000,000.00) Dollars against defendant THOMAS A. CONSTANTINE, Defendant PETER STANGL, defendant Railroads MTA and Metro-North and defendant STATE OF NEW YORK, jointly and severally.

e) As to the Third Claim for Relief, an award of One Hundred Thousand (\$100,000.00) Dollars in compensatory damages against defendants MTA, Metro-North, Peter Stangl and Raymond Burney, jointly and severally.

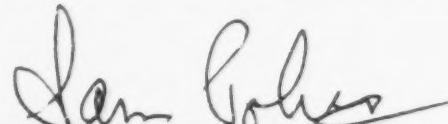


f) As to the Third Claim for Relief, an award of One Million (\$1,000,000.00) Dollars in punitive damages against defendants MTA, Metro-North, Peter Stangl and Raymond Burney, jointly and severally.

g) An award against all named defendants, jointly and severally, for reasonably Attorney Fees pursuant to 42 U.S.C., Section 1988 and statutory mandates.

h) And, together with such other further and different relief as this Court deems just and appropriate in the premises, including but not limited to interest from the fourth day of August 1988, costs and disbursements.

OCTOBER 23, 1989.


SAM POLUR
Attorney for Plaintiff
RICHARD DECLARA
391 E. 149 Street
Bronx, New York 10455
(212) 402-6497



UNITED STATES COURT OF APPEALS
Second Circuit
United States Courthouse
Foley Square
New York, N.Y. 10007

Elaine B. Goldsmith
Clerk

DC Initials	<u>SDNY</u>
DC Dkt #	<u>89-Civ-7316</u>
DC Judge	<u>Sweet</u>

—X—

Richard DeClara,
Plaintiff-Appellant,

v.

METROPOLITAN TRANSPORTATION AUTHORITY,
Metro-North Commuter Railroad Company,
Peter E. Stangl, Thomas A. Constantine,
Raymond Burney, NYS,
Defendants-Appellees.

—X—

Docket No. 90-7925

The Civil Appeals Management Plan of
this Court directs that within ten (10) days
after filing a Notice of Appeal, the appellant
shall file and serve a Pre-Argument Statement
(Form C), order a transcript of the proceedings
from the court reporter and file and serve a
statement concerning same (Form D), pay the
docketing fee, and, that in the event of



default of any of these requirements, the Clerk may dismiss the appeal without further notice.

The Appellant herein, having not so proceeded, upon consideration thereof, it is Ordered that the appeal from the decision dated September 10, 1990 of the United States District Court for the Southern District of New York be, and it is hereby, dismissed.

ELAINE B. GOLDSMITH
Clerk
By

s/
Deputy Clerk

Filed October 25, 1990.
(Official Seal)